

Summary

1. **Claims 1-3, 5, 9, 16-18, 19-22, 24, 28 and 35-38** are pending in the application. The examiner is making this application non-final in the expectation that the applicant will file the necessary amendments to overcome the 101 rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3, 5, 9 and 16-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-3, 5, 9 and 16-18 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory

process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, **Claim 1** is non-statutory since it lacks a tie to a particular machine or apparatus. **Claims 2, 3, 5, 9 and 16-18** are dependent on **Claim 1** and are not statutory at least for the reasons given for **Claim 1**.

Allowable Subject Matter

3. **Claims 19-22, 24, 28 and 35-38** are allowed.

Claims 1, 2, 3, 5, 9 and 16-18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

Reasons for Allowance

4. The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art of record is Segura. Applicant's arguments filed on 2 September 2009 (page 19 paragraph 3 in particular) are deemed to be persuasive and adequately reflect the Examiner's opinion as to why claims 19-22, 24, 28 and 35-38 and 35-38 are allowable over the prior art of record

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737.

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JGS

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/Jonathan G. Sterrett/

Primary Examiner, Art Unit 3623